

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DARWIN PALMER,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO. 08-1208
)
)
RAYMOND RUSTIN, *et al.*,) Magistrate Judge Bissoon
)
Defendants.)

MEMORANDUM ORDER

Darwin Palmer, an inmate confined under judgment of sentence at the State Correctional Institution at Mahanoy, located in Frackville, Pennsylvania, filed this lawsuit pursuant to the Civil Rights Act of 1871, 42 U.S.C. §1983. Palmer has requested leave to proceed *in forma pauperis* (Doc. 1), and he consented to the undersigned conducting all proceedings in this case, including conducting a trial and entering judgment (Doc. 4).

The Prison Litigation Reform Act of 1996, 28 U.S.C. §1915(b), requires that prisoners who cannot pay the full filing fee immediately submit an initial partial filing fee and the balance in installment payments. Consistent with the relevant terms of the Act, the court entered an order (Doc.2) on September 2, 2008, that did the following:

1. Computed the proper initial partial filing fee and informed the plaintiff of that amount;
2. Directed the plaintiff to either:
 - a. sign an authorization which would allow the institutional account officer to deduct the partial filing fee and pay it into the court; or
 - b. sign a form indicating that, whether for financial reasons or otherwise, he chose to withdraw the action;

3. Instructed the Plaintiff to return the signed authorization or notice of withdrawal within twenty days.

Palmer has not returned a signed notice of the withdrawal of this action. Neither has he submitted a signed authorization which would allow the institutional account officer to deduct the partial filing fee and pay it into court. Because the court will not direct the prison to remove money from Palmer's institutional account and pay it to the court until Palmer authorizes a withdrawal, the initial partial filing fee in this case will never be paid.

Palmer's refusal to comply with the directions specifically set out in the court's September 2, 2008 order makes it impossible for the court to comply with Congress' amendments to the law regulating the manner in which *in forma pauperis* prison litigation is to be administered. Because Palmer has not complied with this court's order, it must be concluded that he no longer intends to maintain this action.

AND NOW, this 7th day of October, 2008.

IT IS HERBEY ORDERED that Palmer's motion to proceed *in forma pauperis* (Doc. 1) is DENIED. This action is DISMISSED WITHOUT PREJUDICE. Plaintiff may re-file this action within the applicable statute of limitations period by either paying the full filing fee of \$350.00, or submitting an authorization to permit the withdrawal of funds from his prison account. The clerk is directed to mark this case CLOSED.

s/Cathy Bissoon
Cathy Bissoon
United States Magistrate Judge

cc:
DARWIN PALMER
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301 Morea Road
Frackville, PA 17932